

ENTERED

January 05, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MADOUSSOU KANE,

Plaintiff,

VS.

SCOTT YANCEY, *et al*,

Defendants.

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CIVIL ACTION NO. 4:15-CV-1861

OPINION AND ORDER

Before the court are Defendant Yancey, LLC's Motion to Dismiss and Compel Arbitration or Stay Case (Document No. 5), Defendant Yancey, LLC's Second Motion to Dismiss and Compel Arbitration or Stay Case (Defendant's "Second Motion," Document No. 15), Plaintiff's Motion to Strike Defendant's Second Motion and Response (Document No. 16), Defendant Yancey, LLC's Response to Plaintiff's Motion to Strike (Document No. 19) and Defendant Yancey, LLC's Motion for Sanctions (Document No. 20). These documents were referred to Judge Stacy, United States Magistrate Judge. Judge Stacy filed a Memorandum and Recommendation on December 7, 2015 (Document No. 26), recommending that Defendant Yancey, LLC's Second Motion (Document No. 15) be granted, and that Defendant Yancey, LLC's Motion for Sanctions (Document No. 20) be denied. As described below, the Court will adopt the findings of the Magistrate Judge. The Court also finds that Plaintiff's Motion to Strike (Document No. 16) is denied.

No party has objected to the findings of the Magistrate Judge; therefore the Court will review the Memorandum and Recommendation of the Magistrate Judge under a "clearly erroneous, abuse of discretion and contrary to law" standard. *U.S. v. Wilson*, 864 F.2d 1219,

1221 (5th Cir. 1989). The Court finds that the Magistrate Judge's Memorandum and Recommendation are not clearly erroneous or contrary to law.

In her Motion to Strike, Plaintiff states that Yancey, LLC's Second Motion was not timely filed (Document No. 16 at 1). However, the Court agrees with Defendant that, pursuant to Fed. R. Civ. P. 15(a)(3), Yancey, LLC had 14 days to respond to Plaintiff's Amended Petition (Document No. 19 at 3). Plaintiff's Amended Petition (Document No. 12) was filed on July 22, 2015, and Yancey, LLC replied fourteen days later, on August 5, 2015. Therefore Plaintiff's Motion to Strike fails.

Having considered all applicable motions and the evidence in support thereof, the Magistrate Judge's Memorandum and Recommendation, the record of the case, and all applicable law, the Court adopts the Magistrate Judge's Memorandum and Recommendation as its own and

ORDERS that Defendant Yancey, LLC's Second Motion to Dismiss and Compel Arbitration (Document No. 15) is GRANTED and Plaintiff's claims against Defendant Yancey, LLC are DISMISSED from this suit without prejudice, in favor of being asserted and pursued in arbitration pursuant to the terms for such in the Purchase Order. The Court also

ORDERS that Defendant Yancey, LLC's Motion for Sanctions (Document No. 20) is DENIED and

ORDERS that Plaintiff's Motion to Strike (Document No. 16) is DENIED.

SIGNED at Houston, Texas, this 5th day of January, 2016.



MELINDA HARMON
UNITED STATES DISTRICT JUDGE